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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,881	07/08/2003	Frank Warren Hunt	HAM-10103/04	8891

25006 7590 11/05/2004

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EXAMINER
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MILLER, CARL STUART

ART UNIT	PAPER NUMBER
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3747

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/614,881

Applicant(s)

HUNT ET AL.

Examiner

Carl S. Miller

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3747

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 13, 14, 18-22 and 24 is/are rejected.
- 7) ☒ Claim(s) 3-12, 15-17, 23 and 25-27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/08/03 \$ 4/19/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-2, 13-14, 22 and 24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/094,188. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the 094,188 application has been allowed and makes obvious the above identified claims in that the claims of this application have simply omitted the branch lines of claim 1 of 10/094,188 and have specifically stated that the orifice means may be varied (rather than implying that it may be varied) by claiming it as a separate member.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 18 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of copending Application No. 10/094,188. Although the conflicting claims are not identical, they are

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not patentably distinct from each other because claim 18 is identical to claim 2 of the application and the above-noted reasoning also applies to claim 18.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 19 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of copending Application No. 10/094,188. Although the conflicting claims are not identical, they are not patentably distinct from each other because again, claim 19 is identical to claim 3 of the application thus the above reasoning also applies.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 21 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 7 of copending Application No. 10/094,188. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 21 is nearly identical to claim 7 of the other application so the above reasoning continues to apply.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 13 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Hunt ('826).

The applicant will note that these claims do not require separate lines to the injector and separate flow orifices. Obviously, the flow to each injector will be approximately equal.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt ('826) in view of Amou ('412).

Hunt applies as noted above and Amou teaches swirling the flow through the secondary intake. Since the use of a swirl device to atomize the fuel and thereby improve engine efficiency would have been a preferred result, it would have been obvious to use this technique in Hunt.

Claims 19, 20 and 22 are rejected under 35 USC 103(a) as being unpatentable over Hunt ('826) in view of Abidin.

Abidin teaches plural lines to each intake valve (from the secondary) and the lines are opposite the injector. Thus, this would have been an obvious way to get the secondary flow to the cylinders of Hunt.


Claims 3-12, 15-17, 23 and 25-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl S. Miller whose telephone number is (703) 308-2653. The examiner can normally be reached on MTWTHF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Yuen, can be reached at 703-308-1946. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Carl S. Miller  
Primary Examiner